

Order Denying Motion to Proceed In Forma Pauperis; Order of Dismissal
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1 appropriate only where the allegations in the petition are vague or conclusory, palpably
2 incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir.
3 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

4 B. Petitioner's Claims

5 Petitioner claims that he has been attempting to obtain the return of his property, which
6 was lawfully seized pursuant to a search warrant and then held by the district attorney's office.
7 Petitioner alleges that the failure of the California courts to return his property violates his
8 constitutional rights.

9 The power of a federal habeas court "lies to enforce the right of personal liberty." *Fay v.*
10 *Noia*, 372 U.S. 391, 430 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S.
11 72, 87 (1977). As such, a habeas court only has the power to release a prisoner. It has "no other
12 power." *Fay*, 372 U.S. at 431. Here, the petition does not attempt to challenge either the
13 petitioner's conviction or the length of his sentence. Success in this action would not result in
14 his release or any change in his sentence. Accordingly, habeas jurisdiction is absent, and this
15 petition must be dismissed.

16 **CONCLUSION**

17 For the foregoing reasons, this petition is DISMISSED with prejudice. The Clerk shall
18 terminate all pending motions and close the file.

19 The federal rules governing habeas cases brought by state prisoners require a district
20 court that denies a habeas petition to grant or deny a certificate of appealability ("COA") in its
21 ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. Petitioner has
22 not shown that "jurists of reason would find it debatable whether the petition states a valid claim
23 of the denial of a constitutional right and that jurists of reason would find it debatable whether
24 the district court was correct in its procedural [rulings]." *Slack v. McDaniel*, 529 U.S. 473, 484
25 (2000); 28 U.S.C. § 2253(c). Accordingly, a COA is DENIED.

26 IT IS SO ORDERED.

27 DATED: 2/5/2016

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LUCY H. KOH
United States District Judge